

Independent Contractors and Layoffs

- ◆ Agencies cannot hire laid-off employees as independent contractors to perform duties that they performed before being laid off for at least 6 months.
- ◆ Agencies may hire back laid-off employees as state temporary employees (six months maximum). In addition, laid-off employees can be hired back as independent contractors provided they qualify as an independent contractor (this includes hiring former employees through employment agencies) to perform different or unrelated duties to that performed as an employee.
- ◆ What is an independent contractor?
 - One who is independent of the state; the state does not control the means or method for completing the service.
 - One who provides such service with his or her own/individual investment (for equipments, tools, etc.)
 - One whose service is also available to others.
- ◆ What is wrong with hiring laid-off employees as independent contractors?
 - Violate the employer-employee relationship as defined by US DOL. If they do not qualify as independent contractors, they are state employees, are covered under FLSA, and may be eligible for benefits.
 - May be subject to fines and penalties by the IRS.
- ◆ What can agencies do if some of the same functions need to be done?
 - Hire temporary employees from temp services that have no direct relationship to the service (former employee).
 - Hire laid-off employees without giving preference to these employees to perform duties unrelated to those performed for the state (no link between temporary hiring and layoff).
 - Assign duties to current employees on a temporary basis and consider discretionary pay differential for compensation if necessary and appropriate under rule and an agency's plan.
 - Reorganize to continue or eliminate the function.
 - Pay overtime to existing non-exempt employees to provide the service.